IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 15TH JUNE 2007 / 25TH JYAISHTA 1929

WP(C).No. 15358 of 2007(C)

PETITIONER:

GOPALAN A.E.,
ANAKULATHIL HOUSE, KUALITTIKKARA,
KEECHERY VILLAGE, KANAYANNUR TALUK,
ERNAKULAM DISTRICT.

BY ADV. SRI.K.N.CHANDRABABU

RESPONDENTS:

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1. THE DY. DIRECTOR,
SURVEY & LAND RECORDS (RESERVEY),
THRIKKAKARA.

2. THE ASST. DIRECTOR,
OFFICE OF THE ASST. DIRECTOR,
THRIKKAKARA.

3. RAJAN,
AGED 60 YEARS, THEKKUMKATTIL HOUSE,
KULAITTIKARA, KEECHERY.

4. BABU T.R.,
AGED 45 YEARS, S/O.RAGHAVAN,
THEKKUMKATTIL HOUSE, KULAITTIKARA,
KEECHERY DESOM, KEECHERY VILLAGE.

5. ALEY OUSEPH,
AGED 75 YEARS, W/O.OUSEPH, PARAYIL HOUSE,
KULAITTIKARA, KEECHERY DESOM,
KEECHERY VILLAGE.

R1 & R2 BY GOVT. PLEADER SRI.I.V.PRAMOD.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

WP(C) NO.15358 OF 2007 - C

Dated this the 15th day of June, 2007

J U D G M E N T

The petitioner claims to be the owner in possession of 32 cents of land comprised in Sy.No.246/1 of Keechery Village. According to the petitioner, the fifth respondent filed a suit as O.S.No.92/1998 before the Munsiff's Court, Ernakulam for a decree fixing the western boundary of plaint schedule property and for demarcating the boundary which was dismissed. But, in that suit, the plaint schedule property was shown as 1 Acre 30 Cents. According to the petitioner, as per the title deed of the fifth respondent, the area of property available to the fifth respondent was only 1 Acre and 9.250 Cents and therefore, clearly there is a mistake in the re-survey and he is entitled to get the re-survey measurements corrected. The petitioner has approached the respondents for the same and they have rejected the contentions of the petitioner. The petitioner therefore approaches this Court seeking the following reliefs:-

> "a. a writ of certiorari or such other writ, direction or order quashing Ext.P2 as it is illegal and baseless.
>
> b. a writ of mandamus or such other writ, direction or order directing the 1st respondent to dispose of Ext.P3 representation specifically directing the 1st respondent to take steps to measure the property belonging to the petitioner based on the title deeds and old survey plan;
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> c. grant such other relief that are deemed fit and proper in the circumstances of the case."

2. The learned Government Pleader, on instructions, submits that the property, on remeasurement, was found to tally with the original measurement and since no mistake was found in the re-survey, the petitioner's contention cannot be accepted.

3. Now that there is a dispute regarding as to whether there is mistake in the re-survey or not, the remedy available to the petitioner is to file a suit and get the property measured through an Advocate Commissioner appointed by court. Since disputed questions of facts are involved in this case, the

petitioner's grievances cannot be remedied in a writ petition filed under Article 226 of the Constitution of India.

In the above circumstances, without prejudice to the right of the petitioner to seek his remedies else where, the writ petition is dismissed.

S. SIRI JAGAN,
Judge

Mbs/

S.SIRI JAGAN, J

W.P.(C) NO. OF 2001

J U D G M E N T

DATED:01-06-2007